

EXHIBIT D

U.S. Department of
Homeland Security

United States
Coast Guard



Office of the Administrative Law Judge
United States Coast Guard

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5720
17 September 2019

Sean Riordan
Senior Staff Attorney
ACLU-NC
39 Drumm Street
San Francisco, CA 94111
sriordan@aclunc.org

RE: DHS FOIA Appeal Number 2019-HQAP-00313; FOIA Request Number: 2019-HQFO-00491

Dear Mr. Riordan:

This letter concerns your appeal of the Department of Homeland Security's (DHS) Privacy Office's (PRIV) adverse response to your FOIA request 2019-HQFO-00491. In your initial request on February 25, 2019, you sought specific documents enumerated in 12 unique requests. On March 18, 2019, PRIV supplied you with an adverse response, informing you it considered all 12 requests overbroad and unreasonably described.

After receiving PRIV's adverse response, you exercised your right to appeal. As set for the below, I am **AFFIRMING** in part and **REMANDING** in part the PRIV's determination that your request is overbroad and/or unduly burdensome.

Pursuant to a memorandum of agreement, the United States Coast Guard Office of the Chief Administrative Law Judge is reviewing FOIA appeals for the Department of Homeland Security General Counsel's office. Therefore, the Office of the Chief Administrative Law Judge hereby renders the official appeal decision on behalf of the Department of Homeland Security.

Pursuant to the Freedom of Information Act, a FOIA request must reasonably describe the records sought. 5 U.S.C. § 552(a)(3)(A). As both you and PRIV acknowledge, a request is sufficient if it enable a professional agency employee familiar with the subject area to locate the record with a "reasonable amount of effort." Truitt v. Dep't of State, 897 F.2d 540 (D.C. Cir. 1980). Federal courts explain that "[t]he rationale for this rule is that FOIA was not intended to reduce government agencies to full-time investigators on behalf of requestors, or to allow requestors to conduct "fishing expeditions" through agency files." For example, if a FOIA request is unreasonable if it requires the agency employees to have "clairvoyant capabilities" to discern the requestors needs or requires countless number of hours seeking needles in a bureaucratic haystack.

However, the courts also stress that "adequacy – not perfection – is the standard, and have held that even if the request "is not a model of clarity," an agency should carefully consider the nature of each request and give a reasonable interpretation to the request. LaCedra v. EOUSA, 317 F.3d 345, 347-48 (D.C. Cir. 2003) (concluding that agency

failed to "liberally construe" request for "all documents pertaining to [plaintiffs] case" when it limited that request's scope to only those records specifically and individually listed in request letter, because "drafter of a FOIA request might reasonably seek all of a certain set of documents while nonetheless evincing a heightened interest in a specific subset thereof"; see, e.g., Miller v. Casey, 730 F.2d 773, 777 (D.C. Cir. 1984) (emphasizing that agency is required to read FOIA request as drafted, "not as either [an] agency official or [requester] might wish it was drafted") its terms and overall content should carefully consider the nature of each request and give a reasonable interpretation to its terms and overall content.

Applying these standards, I considered each of your 12 enumerated requests. I find requests in 4, 5, and 12 reasonable described and not overbroad. However, I agree your requests in 1, 2, 3, 6, 7, 8, 9, 10, and 11 are overbroad and not reasonably described.

Therefore, I am **AFFIRMING** PRIV as to 1, 2, 3, 6, 7, 8, 9, 10, and 11, but **REMANDING** to PRIV to reconsider 4, 5, and 12. Privacy shall have 30 days to you with an updated response as to requests 4, 5, and 12, and provide a courtesy copy of the response to my office.

Please note, while this letter considers request 4, 5, and 12, reasonably described, nothing in this letter prevents PRIV from asserting any applicable privileges or informing you that it did not locate any responsive records, after a search is conducted.

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at ogis@nara.gov or call 1-877-684-6448.

Once my office receives an updated response from the Agency, I or another attorney will provide you with a letter disposing of your appeal. If I do not receive a response within 30 days from this letter, I or another attorney will provide you with a letter supplying final agency action so that you may enter federal court, if you so choose.

Sincerely,



Attorney-Advisor
United States Coast Guard
United States Department of Homeland Security

Copy : FOIA Officer
Sent: Via first class mail to the above address.

